

**City of Leawood  
Board of Zoning Appeals Minutes  
March 24 – 5:30 p.m.  
Leawood City Hall Council Chambers  
4800 Town Center Drive  
Leawood, KS 66211**

**CALL TO ORDER/ROLL CALL:**

Chairman Clawson: I'd like to call to order the March 24, 2021 Board of Zoning Appeals Meeting. Could I have roll call, please?

**MEMBERS PRESENT:** Munson, Dunn, Dr. Peppes, Clawson, Hawk, Farrington, Bussing

**MEMBERS ABSENT:** None

**STAFF PRESENT:** Thompson, Tomasic

**APPROVAL OF MINUTES:** Approval of the minutes from the February 24, 2021 Board of Zoning Appeals meeting

**A motion to approve the minutes from the February 24, 2021 Board of Zoning Appeals meeting was made by Hawk; seconded by Dr. Peppes. Motion carried with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.**

**MEETING STATEMENT:**

Mr. Thompson: To reduce the likelihood of the spread of COVID-19 and to comply with social distancing recommendations, this meeting of the Leawood Board of Zoning Appeals is being conducted using the Zoom media format, with some of the members appearing remotely, and City Hall is closed to the public.

The meeting is being livestreamed on YouTube and the public can access the livestream by going to [www.leawood.org](http://www.leawood.org) for the live link.

Any member of the public that wishes to make public comments may do so in writing prior to the meeting or remotely using the Zoom media format. Those wishing to share public comments remotely must register with Wade Thompson, by calling 913-339-9173 or emailing [wadet@leawood.org](mailto:wadet@leawood.org) on or before Friday, March 19th at 5:00 p.m. Public comments will only be accepted during the public hearing portion or each agenda item where a public hearing is required. The City encourages the public to submit comments in writing prior to the public hearing by emailing comments to [wadet@leawood.org](mailto:wadet@leawood.org). Written comments received at least 24 hours prior to the meeting will be distributed to members of the Board of Zoning Appeals.

Electronic copies of tonight's agenda are available on the City's website at [www.Leawood.org](http://www.Leawood.org) under Government / Board of Zoning Appeals / Agenda & Minutes. Because this meeting is being live-streamed, all parties must state their name and title each time they speak. This will ensure an accurate record and make it clear for those listening only. This applies to all Board Members, staff, applicants and members of the public who may speak. All motions must be stated clearly. After each motion is made and seconded, a roll call vote will be taken. The chair or staff will announce whether the motion carried and the count of the vote. Reminder, please mute all microphones when you are not speaking. Thank you.

Chairman Clawson: We have a full agenda tonight, so I would ask that the applicants please limit your comments to five minutes. If anyone is here to speak for or against an application, please try to limit your comments to two minutes if possible. We had one case withdrawn from Old Business.

**OLD BUSINESS:**

Case 09-2021 Justin Stuit/Representative **\*\*WITHDRAWN BY APPLICANT\*\*** - Request for a Variance to the maximum allowable grade change in accordance with the LDO, Section 16-2-5.3(G) in an R-1 District for property commonly known as 2503 W. 91st Street.

Case 10-2021 Wulff Building & Additions, LLC - Request for a Variance to the maximum allowable grade change in accordance with the LDO, Section 16-2-5.3(G) in an R-1 District for property commonly known as 8415 Cherokee Lane.

**Staff Presentation:**

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to raze the existing home and construct a new home. The current home is 5 feet lower than the street. The applicant wants to raise the elevation 3 feet, so a variance of 2 feet is being requested.

Chairman Clawson: Are there questions for staff?

Dr. Peppes: Is it not customary for something like this to have a drainage study done prior to the meeting?

Mr. Thompson: Public Works did a drainage study, and with all the designs that the builder has installed, Public Works has signed off on the drainage.

Chairman Clawson: You're saying it's been done?

Mr. Thompson: If they follow the plan, it will be done. The home is actually still there. The plan has been approved by Public Works.

Chairman Clawson: Are there any other questions for staff? Is the applicant online?

**Applicant Presentation:**

Mark and Sue Carlson, 5411 Villa Wood Circle, Calabasas, CA, appeared before the Board of Zoning Appeals via Zoom and made the following comments:

Mr. Carlson: We are originally from Kansas City. We grew up there, and we are looking forward to returning. We went to Shawnee Mission North and Milburn Junior High. We had a lot of friends in that neighborhood. I think our builder is going to present our case.

Cara Carlson, 7701 W. 156<sup>th</sup> Place, Overland Park, KS, appeared before the Board of Zoning Appeals via Zoom and made the following comments:

Ms. Carlson: We are requesting a variance of approximately 3,400 square feet to raise it above the 1' allotment. The house sits approximately 5 feet lower.

Kirk Wulff, 8837 Lyndon Drive, Prairie Village, KS, appeared before the Board of Zoning Appeals via Zoom and made the following comments:

Mr. Wulff: As Mark and Susan said, they came last summer to look for a place to build their forever home. They found the location of their forever home, and it's on the lot that backs up to one of the Leawood Lakes. It's an awesome lot and a great place to live forever; however, we noticed immediately that the existing home is placed well below street level. We knew from the beginning that we would need to raise the new home above the current home elevation for a couple reasons. The first is aesthetics. I've heard that at least one neighbor has sent an enthusiastically supportive email to either the Codes Department or Public Works, saying the existing home has been an eyesore for a number of decades because it sits so well below street level. Also, the front setback is 35 feet. You have a significant slope for the home that would be a concern for any new home in terms of water infiltration. We then learned, after we had the plot plan done, that the back of the home sits near a floodplain. In order to prevent lower infiltration of water in the back, it would also need to be raised. For those reasons, we are presenting this. I guess you could call them hardship reasons because we want to prevent a flood zone issue and possible infiltration from the street level of the house as well. We also want to raise the garage and driveway as well. That's really a brief summary of how this came to be.

Chairman Clawson: Are there questions for the applicant?

Mr. Bussing: Have you seen the drainage plan that the city engineers have approved?

Ms. Carlson: I have not.

Mr. Bussing: Do you have any reason to believe you would not be able to comply with it?

Ms. Carlson: No, I don't think so. Everything looks good. We need to do a catch basin to store water, and that can be done on the site. We have lots of space behind the sewer easement. I don't see any reason we shouldn't be able to comply with it.

Mr. Thompson: You can see where the catch basin is located on the Site Plan. It will drain along the east side of the home.

Ms. Carlson: That was my proposal. I don't know if that's actually where it needs to go or if it's an appropriate size. That will all be determined when the water study comes in.

Chairman Clawson: Are there other questions for the applicant? Is there anyone who wishes to speak for or against this application? This is a variance, so we have to evaluate the five factors. I would like you to maybe address Uniqueness and Hardship.

Mr. Wulff: Not doing this would create a hardship for building this home because of the flood zone issue in the back of the house and the need to raise the basement level above that flood zone.

Mr. Carlson: We have a couple concerns. One is just frankly the potential that if we had another rain like we did when I was in medical school that flooded the Plaza, it could present a problem for the basement and damage. It could also present an issue for us in insuring the house. With regard to the slope in front of the house, I have concerns about the potential of sliding down the driveway into the garage door. This variance would mitigate that considerably.

Mr. Wulff: Yes, and it is a very unique situation in that I've build several homes in the City of Leawood north of 95<sup>th</sup> Street, and I've never seen a situation where an existing home sits so far below the elevation of the street. I find that rather unique. In fact, other neighbors have expressed an aesthetic concern about that. Both of those issues, I feel we've been able to address.

Mr. Carlson: I should mention that I've emailed everyone in that association and heard back from 90%, who were all very enthusiastic. I explained to them where the house would sit, relative to other roof lines. They're all very happy and delighted.

Chairman Clawson: Wade, letters have all been sent out?

Mr. Thompson: That's correct.

Chairman Clawson: I did drive by the house and looked at the adjacent houses. This house does sit noticeably lower than any house in the entire area. I think that's kind of a unique situation in my mind. Are there any other questions for the applicant? If not, we'll evaluate the five factors. We have to vote in the affirmative on all five in order to support a motion for approval. The first is Uniqueness.

Dr. Peppes: I don't think the picture did it justice because I think there is a significant slope as compared to the rest of the houses in the neighborhood. Even though we're looking at a lot size that is similar to everything else, the slope is just the total opposite of what is there. The house is significantly lower than the adjacent houses. The steepness of the drive in front of the house prevents them from doing anything else. I believe that it has been met.

**Uniqueness criterion satisfied with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.**

Chairman Clawson: Rights of Adjacent Property Owners. All the letters were mailed out, and there was email support.

Mr. Thompson: That is correct. We heard from several neighbors requesting information and wanting to see what the future home would look like. We haven't heard any negative remarks.

**Rights of Adjacent Property Owners criterion satisfied with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.**

Chairman Clawson: Hardship.

Dr. Peppes: Hardship is often hard to understand, but I believe, in this case, when we've got existing factors with the slope of the property and the floodplain at the back door, I feel that if the variance wasn't granted, we would put the homeowners and neighbors at risk for flooding.

**Hardship criterion satisfied with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.**

Chairman Clawson: Public Safety and General Welfare. Staff notes the request involves a grade change. A drainage study would be conducted, and that would be followed by a building permit.

Ms. Farrington: After reviewing this case and hearing that a drainage study was provided and will be added into the permit, I would say that it meets the criterion. I think the concerns on this case would be the adjacent neighbors. Since the drainage study is addressing that, the home will be built in accordance with the study, and it will be met.

**Public Safety and General Welfare criterion satisfied with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.**

Chairman Clawson: Spirit and Intent.

Mr. Dunn: It certainly appears that what will be put in place is more in line with the spirit and intent than what is currently there. I think it has been met.

**Spirit and Intent criterion satisfied with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.**

Chairman Clawson: We have voted in the affirmative on all five factors; therefore, we can support a motion for approval.

**A motion to approve Case 10-2021 Wulff Building & Additions, LLC - Request for a Variance to the maximum allowable grade change in accordance with the LDO, Section 16-2-5.3(G) in an R-1 District for property commonly known as 8415 Cherokee Lane – was made by Hawk; seconded by Bussing. Motion carried with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.**

**NEW BUSINESS:**

Case 13-2021 Myron Serkes/Owner - Request for a Variance to the rear build line for the placement of a fence on a through lot in accordance with the LDO, Section 16-4-3(D) in an RP-4 (previous LDO) District for property commonly known as 12701 Cambridge Lane.

**Staff Presentation:**

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to replace a fence that has been in place since at least 1991 per aerial maps. The fence is actually on property that is owned by the homes association and is 17 feet from the curb.

Chairman Clawson: Are there questions for staff?

Dr. Peppes: All we have is this AIMS map. Is there a picture of the existing fence and what's next to it? I'm having a hard time visualizing it.

Mr. Thompson: *(Adds photo to monitor)* This is taken from the street, so that would be the actual rear side of the home

Dr. Peppes: That's 17 feet?

Mr. Thompson: From the back of curb, yes.

Dr. Peppes: It is legal, nonconforming.

Mr. Thompson: Correct.

Chairman Clawson: Are there additional questions for staff?

Mr. Hawk: Is the fence to be located where the current fence is?

Mr. Thompson: Yes, the fence will be exactly how it appears; it will just be new.

Chairman Clawson: It looks like this block is basically one house deep between the two Cambridge Lanes.

Mr. Thompson: That is correct. It is on a U-shaped street, so the front and the rear are both on Cambridge Lane.

Chairman Clawson: Are there other fences in this area?

Mr. Thompson: There are several. Over the next two years, I would say there will be several people coming in for BZA action to replace all these fences.

Chairman Clawson: Do all the houses face the same direction?

Mr. Thompson: The garage for this home is on the north side of the home. The garage on the home to the south is on the south side.

Chairman Clawson: Are there additional questions for staff?

Dr. Peppes: We're dealing with a legal, nonconforming fence and through lots. Here we are again with through lots, trying to provide people's safety.

Mr. Thompson: That is correct. This fence was probably constructed when the home was constructed.

Chairman Clawson: This is the RP-4 district?

Mr. Thompson: Yes, and that zoning doesn't apply to this area now. It would follow the RP-2 guidelines if it were being developed today.

Chairman Clawson: Other questions for staff? Is the applicant online?

**Applicant Presentation:**

Myron Serkes, 12701 Cambridge Lane, appeared before the Board of Zoning Appeals via Zoom and made the following comments:

Mr. Serkes: I'm speaking on Case 13-2021 and Case 14-2021. The house was built in 1987, and the fence is also from 1987. The original owner did the repairs, and when I purchased the house in 2004, I started repairs on it, too. The lugs that go into the ground are decaying, and they're not encased in concrete. I'm to the point where I'm replacing nine of the pickets per year. It's just cheaper to go ahead and replace everything and have a secure fence. Also, it's a pine fence, and it looks like nothing you would want around your house. Also, I'm replacing it with cedar. They call it a picture frame fence. It's a nice cedar fence. It has little tabs at the top. It's totally different than the first fence. The

reason I want the fence at the same height is every other fence around is a 6' fence. It has the potential to look very funny. The fence would actually come and touch 2/3 of the way down the house. The last 1/3 wouldn't be under a fence at all. The reason I want the 6' fence is that I need the security because it blocks.

Mr. Thompson: We can see the picture now.

Mr. Serkes: We need the security of the taller fence, and we also need to block the views of the interior of the house because of bedrooms and the bathroom. We don't want to be cited for indecent exposure. It's a security and privacy issue. I have a couple other things. The reason we want to keep it horizontal with the exterior of the house is the uniqueness of the fence hitting the house and not going completely around. The hardship is my daughter has not given us any grandchildren; she has given us granddogs. They are full-grown greyhounds. A couple of the big ones can actually step over the 4' fence. The younger ones can jump the 4' fence if they have a mind to.

Chairman Clawson: Let's deal with the build line now, and in the next case, we'll talk about the height. Could you highlight the uniqueness of the situation and also the hardship?

Mr. Serkes: As explained to me some time ago, there's a line that we have to abide by. It does not run parallel to the house for some reason. It goes through the house about 1/3 of the way down the wall. It actually would touch the house on the west side. It's essentially coming in at an angle. Then, on the backside of the house, we lose about 1/4 of the fence because it's coming in at an angle. It'll look like hell. We would also lose our entrance to our kitchen off the patio. We would not be in compliance with the HOA. It would look like nothing you would want to have. We'd lose the fence around the air conditioner. It's a fun project nowadays to steal an air conditioner, so that would be bad. Can I answer any questions you might have?

Chairman Clawson: Any questions for the applicant? I have a question for Wade. Could any fence be built without the variance?

Mr. Thompson: No fence could be built because it's a corner lot on one side and a through lot in the back. The only way it could be built is with a variance.

Chairman Clawson: Any questions for the applicant? Is anyone online who wishes to speak for or against this application? There were three emails in support of this.

Mr. Thompson: Yes, sir.

Chairman Clawson: If there are no questions, we'll go through the five factors. The first is Uniqueness.

Mr. Hawk: The fence has been there for about 30 years. It needs to be replaced. I think we've lost any chance to do anything other than a variance.



Mr. Dunn: I'd like to say from what I can see, given the configuration of this piece of property, it's pretty darned unique with having a street on three sides. I believe that makes it unique.

**Uniqueness criterion satisfied with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.**

Chairman Clawson: Rights of Adjacent Property Owners. Staff notes that letters were mailed out. Three neighbors have provided comments in support.

Mr. Thompson: That is correct, and we have the document signed by the HOA president, wanting the fence replaced as well.

**Rights of Adjacent Property Owners criterion satisfied with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.**

Chairman Clawson: Hardship.

Dr. Peppes: As has been said, a fence couldn't be built if the LDO was followed. This is a legal, nonconforming fence, and to put a fence through the house just doesn't make any sense. I believe it has been met.

**Hardship criterion satisfied with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.**

Chairman Clawson: Public Safety and General Welfare.

Mr. Dunn: Since this is a replacement of an existing fence, I can't imagine how it would negatively impact safety and welfare.

**Public Safety and General Welfare criterion satisfied with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.**

Chairman Clawson: Spirit and Intent.

Mr. Bussing: As staff notes, the fence has been in place for 30 years. Allowing a replacement would not change the existing streetscape.

**Spirit and Intent criterion satisfied with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.**

Chairman Clawson: We have voted in the affirmative on all five factors; therefore, we can support a motion for approval.

**A motion to approve Case 13-2021 Myron Serkes/Owner - Request for a Variance to the rear build line for the placement of a fence on a through lot in accordance with the LDO, Section 16-4-3(D) in an RP-4 (previous LDO) District for property commonly known as 12701 Cambridge Lane – was made by Dunn; seconded by Bussing. Motion carried with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.**

Case 14-2021 Myron Serkes/Owner EXCEPTION Request for a fence height exception in accordance with the LDO, Section 16-4-9.4 in an RP-4 (previous LDO) for property commonly known as 12701 Cambridge Lane.

**Staff Presentation:**

Wade Thompson made the following presentation:

Mr. Thompson: The homeowner needs to replace a fence that has been in place for over 30 years. The fence is on HOA property of the Cambridge Townhouse Association and is 17 feet from the curb.

Chairman Clawson: The existing fence is 6 feet?

Mr. Thompson: Yes.

Chairman Clawson: Any comments from staff for the board? You can present your case.

**Applicant Presentation**

Myron and Cheryl Serkes, 12701 Cambridge Lane, appeared before the Board of Zoning Appeals via Zoom and made the following comments:

Mr. Serkes: Essentially, the fence is 6 feet, 4 feet, and 6 feet. The fence for the HOA is at 6 feet and has been that way from 1987 on. As we said, I can't have my daughter and her dogs over with a shorter fence. The other thing is security, and that is that someone could walk over a smaller fence.

Mrs. Serkes: Any car coming onto Overbrook has lights shining somewhat now, but if it was a 4' fence, it would shine right into the master bedroom and quickly light it up, which would be very uncomfortable and very scary. I'd lose my security and privacy of my bedroom and bathroom.

Chairman Clawson: As a board, I think we understand the issue here unless you really feel the need.

Mr. Serkes: I think we explained it the best we can. Thank you.

Chairman Clawson: I think we understand the situation. Is there a motion?

**A motion to approve Case 14-2021 Myron Serkes/Owner EXCEPTION Request for a fence height exception in accordance with the LDO, Section 16-4-9.4 in an RP-4 (previous LDO) for property commonly known as 12701 Cambridge Lane – was made by Dr. Peppes; seconded by Hawk.**

Mr. Munson: I have a question for staff. I don't see anything about the height of fence being replaced. It's in an RP-4 district. Is there anything about the height that should be in this motion?

Mr. Thompson: I don't think it needs to be in the motion. They're replacing the fence with the same height. The motion is sufficient.

**Motion carried with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.**

Case 15-2021 William J. & Gwen E. Venable/Owners VARIANCE Request for a Variance to the build line for the placement of a fence on a corner lot in accordance with the LDO, Section 16-4-9.3(A) in an R-1 District for property commonly known as 3519 W. 93rd Street.

**Staff Presentation:**

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to construct a 4' tall fence on the west side of the home that would run parallel to Mission Road. The new fence is to prevent pedestrians from cutting across their yard. If it is approved, the new fence will tie in to the existing neighborhood entrance monument. A variance of 25 feet is needed to replace the fence on the location indicated on the map.

Chairman Clawson: Are there questions for staff?

Mr. Hawk: Where does the new fence lie in relation to the large tree?

Mr. Thompson: The fence would be west of the trees and east of the sidewalk. The trees would be inside the fenced-in portion.

Mr. Dunn: As I understand it, this lot backs up to a school. Is that correct?

Mr. Thompson: That is correct. It backs up to Cure of Ars.

Mr. Dunn: That's fairly unique. It's a pretty uncommon condition.

Mr. Thompson: That is accurate.

Mr. Dunn: Mr. Chairman, I believe that factor alone makes it unique.

Dr. Peppes: This backs up to a school, but a 6' fence exists on the rear property line. Is the rest of the fence around their house a 6' fence, or is it a 4' fence?

Mr. Thompson: On the west side, it is a 6' fence as well. The applicant would be able to answer that question.

Chairman Clawson: I looked at this today. I've looked at it a couple different ways. I understand that the applicant has had issues with people trespassing across their property in the vicinity of the driveway, and they have concerns about safety, primarily children. However, there are no fences along Mission Road that I'm aware of.

Mr. Thompson: There are. There might actually be a picture in your packet. They're spread out and are mostly south 95<sup>th</sup> Street. Even past 103<sup>rd</sup>, the neighborhood on the east side has a subdivision fence.

Dr. Peppes: South of 95<sup>th</sup> where it is Overland Park?

Mr. Thompson: Part of it is where Overland Park jogs in and out.

Chairman Clawson: South of 103<sup>rd</sup>, there are a lot of fences. I'm wondering if this is because of children walking down 93<sup>rd</sup> Street and cutting across.

Mr. Thompson: The problem is the parents line up across the street from this home and wait for kids to get out of school. They start on the sidewalk and then cut across. I did meet with both homeowners and had an extended conversation. She was visibly upset. On multiple occasions, she has backed out of the driveway and kids were right there. She has photos from the Ring camera, and it shows where kids walk across. I understand the situation. She was able to provide a movie of 50 kids cutting across the drive.

Chairman Clawson: The proposed fence would be what?

Mr. Thompson: (*shows photo*) The proposed fence is a 3'9" panel fence. You can see the monument it would hook into, and it would run down just past the second large tree. It will have to jog in because of the fire hydrant. Then, it would extend on to the large green utility box.

Chairman Clawson: Are there other questions for staff?

Mr. Bussing: On the AIMS map, I see the monument. What is the square at the terminus at the other end? Is that the green utility box?

Mr. Thompson: Yes, it is a large box.

Mr. Bussing: Will the fence connect to it or abut it?

Mr. Thompson: It would run probably a foot to it. That's what's on the other side.

Mr. Bussing: So, there is nothing between the utility box and the driveway, where the car is parked?

Mr. Thompson: There is a 6' tall chain link fence that belongs to Cure of Ars. It stops about 1 foot away from the utility box. They're going to try to match that.

Mr. Bussing: This would, in fact, force all traffic out to the sidewalk and keep them off their property.

Mr. Thompson: Correct.

Chairman Clawson: Are there other questions for staff? Is the applicant online?

**Applicant Presentation:**

Gwen and William Venable, 3519 W. 93<sup>rd</sup> Street, Leawood, appeared before the Board of Zoning Appeals via Zoom and made the following comments:

Mrs. Venable: We have been property owners here for 34 years, since June, 1987. I grew up here. This is my family home that we purchased in 1987. I attended Cure of Ars. The issue became of grave concern to me and to my husband back in the fall of 2017. I was physically in my car, had the ignition running, had the car in reverse, and had my foot on the accelerator, and there were children on the sidewalk, which I had seen. They might have seen me get in the car, but as I turned my head to back up, two little heads ran behind my SUV. I could only see the top of their heads. It shook me up, and even now talking about it, it shakes me up. For years, we have tried to work with the school and the city and the parents and the children. My husband would go out in the driveway when I needed to back out and asked them to stay on the sidewalk and out of the driveway. We feel we've exhausted every avenue we can and cooperated with the city when they came to us to ask for a 2' easement so they could widen the sidewalk and bury the lines. The reason for widening the sidewalk was parents were concerned about the kids being so close to Mission Road. We were more than happy to cooperate. We understand the concern about Mission Road. I grew up here. My children grew up here. It's something you learn to live with, but it's become a problem since the children no longer ride buses to school. The parents have now decided to use 93<sup>rd</sup> Street as a parking lot every day in the school year. It's not just one or two. It starts with one or two crossing the driveway, and then it turns out to be 15-25 children every day of the school year. It's not just children. It's adults. We have people use our driveway. They walk up and down our driveway morning, noon, and night. They walk their dogs. They drive their strollers. We even had a car drive through our driveway, over the grass, over the curb, and onto Mission Road. This was all just within the last 4-5 years. We have had a car stolen, a truck stolen out of our driveway about 15 years ago. My back windshield in my car was shattered. Those aren't things the children did. It's just people using our driveway or people retaliating for whatever reason. It is a safety concern. We tried to work with the church and the school. They can only do so much. We went to the city and asked them to put No Parking signs on our side of the street to hopefully eliminate parents parking

there. They just moved to the other side of the street. First, it started out with 2-3 cars; now, it's 16 cars deep and an average of 2-3 children per car. That's 24-36 kids. These aren't kids that live on our street. These aren't kids walking home. These are kids walking to their parents' cars, who turn around in our driveway. They used to sit in our driveways and wait for their kids. It's very emotional. I try not to be emotional about it, but we basically do not leave our home from 3:00 until about 3:45 because of the kids using our driveway or the fear of backing over or running into someone. My car is a 2005. We put an aftermarket camera on it. It's nothing like you see in cars today. I don't feel like I should be forced to buy a brand-new car. We'd also like our privacy. My husband and I were in our car in the driveway one day, and a man walked around the front of the house from the bushes. I asked if I could help him, and he said that he was just going over to the church, walking through the yard. Another woman was walking her dog across the front yard and driveway and I asked her the same thing. She said she was just walking around the neighborhood after leaving her car at Cure. I told her I'd appreciate it if she would use the sidewalk that the city has paid a fortune for, taxpayers have paid a fortune for. I've tried to approach the parents. That's impossible. The police have been here 3-4 times. I don't know what else to do. It also impacts the value of our property. I'm a real estate agent. I know what this kind of activity causes. We have Mission Road on the side, and we knew when we bought the home that Cure was behind us. Now, we've got a parking lot on 93<sup>rd</sup> Street, which used to be a relatively quiet street. Now, they're parking there in the mornings. There's no reason for it. Cure has a parking lot. They sit out here from 3:08 until about 3:35 waiting for their kids to come out, and they can't sit in the parking lot for five minutes to get out the exit. They call me crazy.

Dr. Peppes: Have you considered possibly putting some type of landscape shrubbery over there to help with this?

Mr. Venable: We have looked at that. The issue is cost. It's extremely expensive to get enough bushes and vegetation planted close enough together that it's going to be a deterrent for the kids, especially buying small 5-gallon plants. They're going to go right through that like it's not there until they get some height. It really was eliminated as an option because of cost and effectiveness.

Mrs. Venable: It's about 142 feet, and I have priced some evergreens that are probably not even 3-4 feet tall, and they run about \$60 apiece. The kids have been on our front porch. They know we've asked them not to get on the porch because the church has sent out emails to the parents, and hopefully the parents have said something. The school principal was coming out on the sidewalk, trying to keep the kids off our driveway, but as soon as he leaves or the very next day, they're walking through the yard. They're aware of what they're doing; they just don't care. I have grandchildren and obligations with real estate to go out and show houses, pick my grandson up, go to doctor's appointments. I try to do my best to watch for the children. I'm 68 years old. I'm a reasonable person, and this isn't something that we just have nothing better to do with our money and our time. It's a liability to us if someone gets hit in our driveway.

Chairman Clawson: I think you presented your case well. I think we understand the situation. It's a serious situation. Does the board have any questions that haven't been covered?

Mr. Hawk: It's two factors: safety and privacy. The safety is the children, and the people have a right to privacy in their home. Landscaping is not only costly, but it will take quite a while for it to be enough to be a deterrent. A small fence looks like a reasonable solution.

Chairman Clawson: You certainly addressed your hardship issue well. Uniqueness of the property, given the location in close proximity to Cure of Ars would be a factor. I think we're ready to vote on the five factors. Is anyone here to speak for or against this case?

Travis Torres, Director of Building and Code Enforcement, appeared before the Board of Zoning appeals via Zoom and made the following comments:

Mr. Torres: I have a question for Wade and Ashley. Do we need to make a condition that it is placed around the fire hydrant in accordance with whatever the Fire Department would determine? Fire Code says at least 3 feet, and we'd want to make sure it's no farther than the property line.

Mr. Thompson: They have a 2' easement along Mission, so their property line is actually on the other side of the sidewalk. Usually, the property line is on the inside of the sidewalk. It's going to be about 5 feet or more from the existing property line. Of course, it wouldn't pass inspection if it was too close to the fire hydrant. The homeowners are aware of this.

Chairman Clawson: So, that would just be part of any permit.

Mr. Thompson: Correct.

Dr. Peppes: What about the electrical box?

Mr. Thompson: That would also go through permitting. I think since there is already an existing fence on the other side, the utility box was placed where the utility company wanted it. The fence has been there a long time. I think if they match what is currently there, it would probably be okay, but again, that would go through permitting.

Chairman Clawson: You wouldn't want a gap there, or kids would just go through the gap.

Mr. Thompson: I think it's far enough back, and there is also a rose bush on their side of the gap.

Dr. Peppes: The mentality would be to plant rose bushes all the way around that. If this isn't going to be an enclosure for them, it's a bandaid to do it on the sidewalk. The entry where the kids are coming out has holes in the fence that they can just go right through.

Mr. Thompson: That would be a possibility. I would think there probably is a determined measurement, that it has to be 12 inches away from the utility box. If it's the only way they could build the fence, I'm sure they would rather have what they can get.

Chairman Clawson: Questions for staff or the applicant?

Mr. Thompson: If I can get this picture, you can see the blue line on the west side of the sidewalk. That's their property line.

Dr. Peppes: The picture that's in the packet is the fence?

Mr. Thompson: Yes, and what I received today will show you where it butts up to the monument.

Chairman Clawson: So, very similar to what's in our packet.

Mr. Thompson: Yes, and according to the applicant, it's 3.9 feet tall.

Chairman Clawson: Other questions? Then we will proceed with evaluating the five factors. The first is Uniqueness.

Mr. Bussing: Standing back and looking just at this property, it's not unique because there are hundreds of corner lots in Leawood, but I think that the location of this lot next to Cure of Ars on Mission Road, on a street that's immediately accessible by the children to get to their parents' cars, makes this different than about any corner lot. For a lot of reasons the applicant has cited, it has been satisfied.

**Uniqueness criterion satisfied with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.**

Chairman Clawson: Rights of Adjacent Property Owners. All letters were mailed out with no complaints?

Mr. Thompson: Yes, and I did receive one email from Cure of Ars concerned about their exits on the north and south. I don't think this fence would affect that at all.

**Rights of Adjacent Property Owners criterion satisfied with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.**

Chairman Clawson: Hardship.

Mr. Dunn: I think the applicant has done a very good job of presenting the hardship.



**Hardship criterion satisfied with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.**

Chairman Clawson: Public Safety and General Welfare.

Mr. Bussing: Approval of the variance would actually enhance public safety.

**Public Safety and General Welfare criterion satisfied with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.**

Chairman Clawson: Spirit and Intent.

Ms. Farrington: I believe it does meet it. It is actually a wrought-iron see-through fence so you can see through it. It is not a privacy fence. It ties in to existing monuments that are already built and in place.

**Spirit and Intent criterion satisfied with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.**

Chairman Clawson: We have voted in the affirmative on all five factors; therefore, we can support a motion for approval.

**A motion to approve Case 15-2021 William J. & Gwen E. Venable/Owners VARIANCE Request for a Variance to the build line for the placement of a fence on a corner lot in accordance with the LDO, Section 16-4-9.3(A) in an R-1 District for property commonly known as 3519 W. 93rd Street – was made by Farrington; seconded by Munson. Motion carried with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.**

Case 16-2021 Tim Cunningham Homes/Builder - Request for a fence height exception in accordance with the LDO, Section 16-4-9.4 in an R-1 District for property commonly known as 14009 Canterbury Street.

**Staff Presentation:**

Wade Thompson made the following presentation:

Mr. Thompson: In July of 2020, the board approved a variance request to place a 5' tall fence with a gate beyond the front build line. The property owner would like the fence to be 6' tall. A request for the 1' variance is before you today.

Chairman Clawson: Are there questions for staff? Is the applicant online?

**Applicant Presentation:**

Tim Cunningham, 13911 W. 76<sup>th</sup> Court, Shawnee, appeared before the Board of Zoning Appeals via Zoom and made the following comments:

Mr. Cunningham: Like Wade said, we came before the board and had it approved to put the fence beyond the build line. We didn't really discuss the height of the fence at that time. The homeowner will speak in a second, but he has a son with special needs. The height would be for safety for his son. Michael Ray will talk about his son.

Michael Ray, 14009 Canterbury Street, appeared before the Board of Zoning Appeals via Zoom and made the following comments:

Mr. Ray: As Tim mentioned, we're in the final stages of planning. We'd like to have it for both safety and security along the street, just to have as much of a deterrent as we can. He's ten years old and is getting a bit bigger. It's the goal of the fence in general. We'd appreciate your consideration on it.

Chairman Clawson: I remember this case. It was a year or so ago?

Mr. Thompson: Yes, it was July of 2020.

Chairman Clawson: Are there questions for the applicant?

Mr. Hawk: Is it a wrought iron fence?

Mr. Thompson: Yes, sir.

Chairman Clawson: Is there anyone here who wishes to speak for or against this application? Is there a motion?

**A motion to approve Case 16-2021 Tim Cunningham Homes/Builder - Request for a fence height exception in accordance with the LDO, Section 16-4-9.4 in an R-1 District for property commonly known as 14009 Canterbury Street – was made by Bussing; seconded by Hawk. Motion carried with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.**

Case 17-2021 Rick Korvick/Owner - Request for an Exception to the front yard setback in accordance with the LDO, Section 16-2- 5.3(D) in an R-1 District for property commonly known as 11205 Rosewood Street.

**Staff Presentation:**

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to construct a covered entryway on the front of the home. The addition as shown on the plan will be 12'x5' or 60 square feet and encroach the front build line of 30 inches. An exception of 30 inches is being requested.

Chairman Clawson: It meets the requirements for an exception.

Mr. Thompson: That is correct.

Chairman Clawson: Are there questions for staff?

Mr. Hawk: Is this any different from so many of these cases we've seen over the years?

Mr. Thompson: The ones that meet the requirements for an exception, no, this is no different. Every once in a while, we get a larger one that's over the 60 square feet as part of the exception rule. This is pretty standard.

Chairman Clawson: There's no entryway now in the house.

Mr. Thompson: Correct; it is uncovered.

Chairman Clawson: It seems like a reasonable request. Is the applicant online?

**Applicant Presentation:**

Rick Korvick, 11205 Rosewood Street, appeared before the Board of Zoning Appeals via Zoom and made the following comments:

Mr. Korvick: Wade gave a good explanation, and it would be great safety as well as improve aesthetics for the entry of the house.

Chairman Clawson: Any questions for the applicant?

Mr. Bussing: I drove by this house yesterday. It's a lovely house in a lovely neighborhood, and I think the requested exception would be quite fitting.

**A motion to approve Case 17-2021 Rick Korvick/Owner - Request for an Exception to the front yard setback in accordance with the LDO, Section 16-2- 5.3(D) in an R-1 District for property commonly known as 11205 Rosewood Street – was made by Bussing; seconded by Hawk. Motion carried with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.**

Mr. Bussing: Wade, the flagpole got me curious. Is there an exception request for a flagpole? That's a structure.

Mr. Thompson: It can't exceed 15 feet.

Mr. Bussing: In terms of placement with the build lines, are there guidelines?

Mr. Thompson: Yes, when they install those, it goes through the permitting process.

Mr. Torres: Typically, we wouldn't issue a permit on the flagpole, but it would just have to be in compliance with city ordinance. I'm trying to remember if the flagpole was specifically added to the accessory uses or not, but it couldn't exceed the maximum

height of 15 feet for an accessory use. There's nothing in the code for flagpoles as far as that is concerned.

Case 18-2021 John Tarantino/Owner - Request for a Variance to the maximum allowable grade change in accordance with the LDO, Section 16-2-5.3(G) in an R-1 District for property commonly known as 9239 Lee Boulevard.

**Staff Presentation:**

Wade Thompson made the following presentation:

Mr. Thompson: The property owner has constructed a sport court without a permit. In doing so, the sport court exceeds the 1' increase allowed by the code. A variance for the additional 16 inches is being requested.

Chairman Clawson: Are there questions for staff?

Dr. Peppes: That means it's 16 inches over the 1 foot?

Mr. Thompson: That is correct. There are some documents I placed at your station that apply to this case.

Chairman Clawson: These documents were provided by the applicant?

Mr. Thompson: That is correct.

Chairman Clawson: Has there been a drainage analysis?

Mr. Thompson: Yes, a plan was approved by Public Works. Even where it's at right now, it passed the criteria.

Mr. Hawk: Isn't this a case we looked at quite thoroughly one time?

Mr. Thompson: Yes, and this request was actually made. They decided to redesign the pool and the sport court. They built the pool and were supposed to build the sport court over. This is something the applicant will explain to you. It was not built in the right spot, per the applicant. That's why he has to come before the board. It's not where it's supposed to be.

Dr. Peppes: The sport court is there but not in the right place from what the applicant wants.

Mr. Thompson: Yes, and it exceeds the 2'6" on the northeast side of the sport court. There are pictures in that packet that show the sport court. You can see it's pretty close to the northern property line.

Mr. Torres: The sport court is in a compliant location, but with it being constructed in a different location than what was on the original plan, it needed a grade change variance, which we would have applied to anyone else that was going it the way it was done. That's why they're here.

Chairman Clawson: Is this on the east property line?

Mr. Thompson: No, it is actually maybe 100 feet away from the rear property line. It's a very long, skinny lot.

Ms. Farrington: The Site Plan shows the sport court, but it is the location that it is not placed? Is it actually placed closer to the property line?

Mr. Thompson: That is correct.

Ms. Farrington: Can you show the Site Plan and draw on where it's actually built so we can see the difference?

Mr. Thompson: (*shows plan*) You can see it actually just slid over to the north.

Ms. Farrington: What is the difference between the two?

Mr. Thompson: The one on the right is closer to the north property line. The one on the left is probably 30 feet from that property line.

Ms. Farrington: So, it was approved for the plan on the left, but when it was constructed, it just shifted closer to the right.

Mr. Thompson: That is correct.

Chairman Clawson: Any additional questions for staff? Is the applicant online?

**Applicant Presentation:**

John Tarantino, 9239 Lee Boulevard, appeared before the Board of Zoning Appeals via Zoom and made the following comments:

Mr. Tarantino: Thank you for allowing me to speak. I understand that I'm working backwards, and we're asking for a variance for the sport court that's already placed. I do want to provide some color and background so you can understand and I can explain our situation a bit better. We started building our house in 2018. It's been three years of misery, and I think that's an understatement. We're still not finished. I know you've heard your horror stories from residents up here, but we've bored underneath Lee Boulevard. We've added 212 linear feet of PVC pipe. We've had pumps added to the back yard because of the grading changes and challenges in our back yard with the grade. I could go on. I'll spare you the details, but it's been more stress and heartache unexpected and financial burden than we've ever dreamed. It's been a miserable process.

I say that because it's important to understand that I wanted to speed this process up. I talked to a contractor, and I told my builder I would take care of it. I told him to go ahead and put the sport court in. He had 17 years of experience. This is the first home that my wife and I have built, and I'm still unaware of all the permitting guidelines that we need to follow. He told me he's done these courts before, and he had our Site Plan. I paid him our deposit. We went out of town. By that time, when we returned, the concrete pad was poured. I paid him the rest of the money. He finished in a couple days. That brings us to where we are today. My understanding is we are 16 inches above grade, compared to our allowable grade change. I have contacted both of our neighbors. There should be a letter from my neighbor to my north and my neighbor to my south. They have said aesthetically that the court is fine, and the functionality of the court is not an issue, according to Public Works. There should also be an email that I forwarded to Wade that speaks to that. Not approving this request for a variance, although it is backwards and we've gone about it the wrong way, though not with any malintent, is going to probably cost us another \$30,000-\$35,000, not including the money we've already spent on the court. It's also going to drag out our process. Neighbors are tired of seeing Bobcats and contractors running through our yard, for sure. We have a dog that can't go out in the yard because it's full of mud. We're waiting for the court to get approved or denied so we can put our grass in. We have a yard full of mud, and I'm sure the neighbors are tired of looking at that as well. We have four awesome boys that live to our north. They go to Cure of Ars where my son and daughter go to school. They love to play on the court as it is now. It's a safe place for him to play. We can't put a basketball court or goal in the front yard because my kids are young, and I worry about them running out onto Lee Boulevard to chase a ball. The only spot really is the back yard. I'm asking for this variance and am hoping that you can overlook that I went about this the wrong way. I'm asking for your consideration.

Chairman Clawson: Are there questions for the applicant? This is a variance. I would ask you to maybe just touch on Uniqueness and Hardship.

Mr. Tarantino: Uniqueness is the size and shape of the lot. It's 655 feet long and only 151 feet wide, which poses a problem for where we place the court. I think you're going to have a hard time finding a good location for the court anywhere. As far as the grade changes from south to north, they're fairly dramatic. If we move it too far south, it will have runoff issues. In fact, based on the land, the architect said we could not have it on our south property line. I think it's unique in that regard. The grading issues are extremely unique. We have basically a bowl in our back yard that we've had to add two pumps to shoot water out the side and then ultimately out into the front. The grading changes are unique in nature as well.

Chairman Clawson: Is there anyone online who wishes to speak for or against this application? Any other comments or questions from the board? This is a variance, so we need to evaluate the five factors. The first is Uniqueness.

Mr. Munson: Sheer size does make it unique, so I would say that's a good case to approve this particular part of the process.

Mr. Dunn: I concur with Mr. Munson.

**Uniqueness criterion satisfied with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.**

Chairman Clawson: Rights of Adjacent Property Owners. All letters have been mailed?

Mr. Thompson: That is correct, and you have the letters from the neighbors, supporting the request.

**Rights of Adjacent Property Owners criterion satisfied with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.**

Chairman Clawson: Hardship.

Mr. Munson: This is a situation where we have to balance what would be gained to invoke the hardship as opposed to what is gained by leaving it there. I think the second would overcome the hardship of adding a deterrent to approval of this case.

Mr. Hawk: The board originally approved the sport court, and on the drawings that Wade submitted, it did get installed. It's not that far removed. If we had seen that in this second request earlier we would have approved it, too.

Mr. Thompson: I just wanted to clarify that the board didn't approve the sport court. They pulled the case and redesigned so they didn't have to before the board.

Chairman Clawson: A drainage study was performed?

Mr. Thompson: Yes, sir.

Chairman Clawson: All right. Any other comments?

**Hardship criterion satisfied with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.**

Chairman Clawson: Public Safety and General Welfare.

Ms. Farrington: Given the situation that the sport court is already constructed and where it stands at this point, not meeting the grade and us voting on whether or not we're going to approve the change in grade variance, the hard part of this public safety and general welfare is how this displaces an elevation change and affects the lots adjacent, as well as the homeowners themselves. Listening to the homeowner, hearing that a drainage study was conducted and that there have been numerous mitigation efforts to move grade on the lot itself for the existing homeowner with their house design as well as other items on the property, this is shifted a bit farther over than what was originally planned with a little

different grade, but I think they are committed to making sure the drainage is met and the adjacent homeowners are not affected due to the elevation change, and in the future, if that were to occur, they'll make mitigation efforts to take care of it.

**Public Safety and General Welfare criterion satisfied with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.**

Chairman Clawson: Spirit and Intent.

Mr. Bussing: I don't think the approval or denial of this variance would have any effect.

**Spirit and Intent criterion satisfied with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.**

Chairman Clawson: We have voted in the affirmative on all five factors; therefore, we can support a motion for approval.

Mr. Bussing: You mentioned a couple times that a drainage study was completed. On Page 2 of the Staff Report, the staff comment says that drainage could be a challenge. Does staff have some reason to believe it could be a challenge?

Mr. Thompson: Just the steepness of where it has been raised looked like it could be a challenge. I don't know how wide the sport court is, but it seems like a lot of water that could run down toward his northern property line. If Public Works signed off on it, it should be okay.

**A motion to approve Case 18-2021 John Tarantino/Owner - Request for a Variance to the maximum allowable grade change in accordance with the LDO, Section 16-2-5.3(G) in an R-1 District for property commonly known as 9239 Lee Boulevard – was made by Munson; seconded by Dunn. Motion carried with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.**

*MEETING ADJOURNED.*